

VIA EFS

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Attorney Docket No. 25739-024

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Leventhal, et al.
Serial No: 10/633,179
Filed: August 1, 2003
Patent No.: 7,611,013
Issue Date: November 3, 2009
For: Retractable Assembly and Packaging System for Same

Examiner: John G. Pickett
Art Unit: 3728

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APPLICATION FOR PATENT TERM ADJUSTMENT

Applicants submit herewith this Application for Patent Term Adjustment under 37 C.F.R. § 1.705(d) in the above-referenced patent application. Applicants believe no additional fees are due as the Office acknowledged the submission of the \$200.00 fee set forth in 37 C.F.R. §1.18(e) in the Decision mailed October 10, 2009 by the Office of Petitions. A copy of the Decision is attached. However, Applicants hereby authorize the Commissioner to charge this fee, or credit any overpayment in fees, to Deposit Account No. 50-0311; Customer Number **30623**; referencing Attorney Docket No. 25739-024.

The above-identified application issued on November 3, 2009. The total patent term adjustment calculated by the United States Patent and Trademark Office under 35 U.S.C. §154(b) is 411 days, which is recited on the face of the above-referenced patent. Applicants petition the U.S. Patent and Trademark Office for reconsideration of the patent term adjustment calculation to **1172 days**, based on the facts provided herein. This Communication is submitted in view of the decision by the U.S. District Court decision in *Wyeth v. Dudas* (D.D.C. 2008) on September 30, 2008.

Applicants submit that the 323 days of Patent Term Adjustment identified in the Notice should be increased based on the facts given below. This Request is submitted in view of the decision by the U.S. District Court decision in *Wyeth v. Dudas* (D.D.C. 2008) on September 30, 2008.

More than 3-Year Pendency

According to the provisions of 37 C.F.R. § 1.702(b), Applicants are entitled to Patent Term Adjustment for the failure of the Office to issue the patent within three years of the date on which the application was filed. Applicants are entitled to this adjustment because none of the provisions described in 37 C.F.R. §1.702(b)(1)-(5) apply in the instant application. The amount of the Adjustment is counted from August 2, 2006 (*i.e.*, the day after the date that is three years from the date that the application was filed), through the Issue Date of the patent, *i.e.* November 3, 2009, subtracting only time legitimately attributable to Applicants' delay. Applicants note that from February 20, 2007 through January 7, 2008, *i.e.* 321 days, and July 19, 2009 through November 3, 2009, *i.e.* 108 days, delay under 37 C.F.R. 1.702(a) and 37 C.F.R. 1.702(b) overlap. Applicants submit that an additional $1190 - 321 - 108 = 761$ **days** of Office delay should be included, under 37 C.F.R. 1.702(b), in calculating the total Patent Term Adjustment.

In summary, Applicants respectfully request that the Patent Term Adjustment be increased from 411 days as reported on the Determination of Patent Term Adjustment under 35 U.S.C. §154(b) to 1172 days.

The above-referenced patent is not subject to a terminal disclaimer. In accordance of the facts stated above, Applicants respectfully request review of this Application for Patent Term Adjustment under 37 C.F.R. § 1.705(b)

Respectfully submitted,

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